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**U.S. Citizenship  
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Services**

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FILE:



Office: RENO

Date:

**SEP 29 2008**

MSC 06 046 12921

IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in cursive script that reads "Michael T. Kelly".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Reno, Nevada. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on November 15, 2005. The director issued a Notice of Intent to Deny (NOID) the application on December 6, 2005. On August 11, 2006, the director requested the presence of the applicant for interview on September 13, 2006 and also requested that the applicant bring evidence of entry into the United States prior to January 1, 1982 and evidence of continuous residence in the United States from January 1, 1982 to present. During the September 13, 2006 interview with the Citizenship and Immigration (CIS) officer, the applicant was again requested to submit documentation establishing his entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period. The applicant provided a partial response received in CIS offices on October 10, 2006. On November 30, 2006, the director denied the application, determining that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director made his decision prior to the deadline given by the CIS officer to submit additional evidence and that during the September 13, 2006 interview the director dismissed his documentary evidence. The applicant contends that he provided the CIS officer with documentation including several postcards that he and his mother had received and a letter from [REDACTED] who indicated the applicant and his mother were living with him. The applicant asserts that the CIS officer did not review copies of his 2003, 2004, and 2005 tax returns, employment records, utility bills, insurance policies, and contracts that he brought with him to the interview. The AAO observes that the applicant had opportunity to present additional documentation on appeal and notes that the AAO has reviewed the totality of the record prior to making this decision.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the applicant attempted to file the application. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988.

CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *See* 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date for the requisite time period. The AAO observes that documents relating to employment, residence, or filed tax returns outside of the relevant time frame of January 1, 1982 through May 4, 1988 have little or no probative value when determining the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence through May 4, 1988 or the date the applicant attempted to file the application. Thus, the director's failure to comment on those documents is not error. Similarly, the AAO will not comment on or discuss documents not relevant to establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period.

On the Form I-687 filed on November 15, 2005, the applicant indicates that he last entered the United States on December 11, 2000 on an F-1 student visa. The applicant lists his address for the pertinent time period as: [REDACTED] from 1980 to 1987. The applicant does not include any absence from the United States during January 1, 1982 to May 4, 1988. The applicant's date of birth is November 25, 1978, thus, the record does not include employment during the pertinent time period.

The record includes a photocopy of the applicant's F-1 student visa issued August 18, 1997 and Form I-94 showing the applicant's entry into the United States on December 11, 2000 as an F-1 student.

The record also includes:

- An undated form document completed by the applicant's mother, [REDACTED], that bears a notary seal and signature but no date. The form document provides the following information: that the applicant and his mother came to the United States in April 1980; that the applicant and his mother entered the United States through the North Dakota/Canada border; that the applicant's mother had a visitor visa; that the applicant's mother was self-employed as a vendor in Minneapolis, Minnesota; and that the applicant's mother lived in Minneapolis, Minnesota between January 1982 and May 1988.
- The record further includes an undated form document completed and signed by [REDACTED] with a notary seal and signature but no date. The declarant states that he currently lives in [REDACTED]; that he first met the applicant in April 1980; that the applicant's mother remains "a member of our church;" and that the applicant looks upon the declarant as a father and remained in contact with the declarant even when the applicant was far away.
- An October 9, 2006 letter signed by the applicant who indicates he is providing a notarized letter from his mother's friend who "describes the fact that my mother and I lived with him for a while" during the prior to January 1, 1982 through 1987 time period; and a postcard that his mother and he received from his aunty in December 1986.
- An April 19, 1986 letter notarized in [REDACTED] signed by [REDACTED] who declares: that he moved to the United States in 1979 as a graduate student at Cornell University; that the applicant's mother and the applicant visited him "in 1981 for two weeks from Minneapolis where they were staying with friends;" that after visiting him they returned to Minneapolis where the applicant's mother continued to sell arts and crafts and operated an informal salon; that he returned to Kenya in 1982 and has been in communication with the applicant's mother who had also returned to Kenya in the meantime. [REDACTED] provides a copy of a March 2, 1985 bill issued to him from Cornell University and indicates that this is a bill he had not cleared when he left Cornell.
- Three postcards sent to the applicant's mother at [REDACTED] Minnesota from Kenya bearing postmarks of December 8, 1981, December 23, 1981, and December 29, 1986.

- Three undated photographs of unidentified individuals at unidentified locations.

In the interview notes taken by the CIS officer, the CIS officer notes that the "applicant will get evidence from the family in St. Paul, Minnesota to prove his residency." On November 30, 2006, the director denied the application observing that the applicant had submitted the notarized letter from [REDACTED] and the three postcards but had not provided any evidence from the family with whom the applicant and his mother had resided.

The applicant provides on appeal a December 15, 2006 letter from his mother stating: that she and the applicant entered the United States before 1982; that she has moved back to Kenya; that she no longer has bills, receipts or other documents from the time spent in the United States; and that most of the families that she and the applicant lived with have returned to Kenya after completing their studies and missions in the United States.

The AAO has reviewed the above information and the Form I-687 and finds that the record does not contain sufficient evidence establishing the applicant's entry into the United States prior to January 1, 1982 and continuous unlawful residence until the date of his departure from the United States, apparently sometime in 1987. The two documents from the applicant's mother do not provide details of the circumstances and events surrounding the applicant's claimed residence in Minneapolis. The applicant's mother does not disclose the circumstances of the applicant's schooling in the United States during this time period or provide any other detailed information pertinent to the applicant's residence in the United States during this time period. The general nature of information that characterizes these two documents lacks sufficient indicia to establish the reliability of their assertions. Likewise, the document completed by [REDACTED] provides no details pertinent to establishing the applicant's entry into the United States prior to January 1, 1982 through the date of his departure from the United States sometime in 1987. For these reasons, the AAO finds these documents have no or minimal probative value regarding the applicant's residence in the United States.

Similarly, the April 19, 1986 letter signed by [REDACTED] identifies only a two-week period in 1981 when the applicant and his mother visited him at Cornell University. As this individual did not live in Minneapolis and returned to Kenya in 1982, this individual does not have personal knowledge that the applicant lived in Minneapolis, Minnesota or anywhere else in the United States for the requisite time period. This document has no probative value in establishing the applicant's continuous unlawful residence for the required time period. The AAO has also reviewed the three postcards sent to the applicant's mother at an address in the United States. The AAO does not find the postcards probative as they cover independent one-time events only showing that the applicant's mother was reachable at the address on the date sent. The postcards do not establish that the applicant resided continuously in the United States for the requisite time period. The photographs submitted are not relevant to this matter as the photographs do not contain information identifying the time period or place the photographs were taken.

These deficient documents and the Form I-687 constitute the only evidence of the applicant's residence in the United States from prior to January 1, 1982 through the requisite time period. These documents lack

probative value for the reasons noted. The absence of probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of information in the documents submitted and the lack of any other credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.